

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

PEDRO ROSSELLO, et al.,

Plaintiffs,

v.

BROWN & WILLIAMSON, et al.,

Defendants

CIVIL CASE NO. 97-1910 (JAF)

**DEFENDANT OPMS' SECOND SUBMISSION OF
SUPPLEMENTAL AUTHORITY IN SUPPORT OF THE MOTION
TO ENFORCE THE ARBITRATION PROVISIONS OF MSA**

TO THE HONORABLE COURT:

COME NOW Philip Morris USA Inc., R.J. Reynolds Tobacco Company and Lorillard Tobacco Company (the "OPMs"), through their undersigned counsel, and respectfully submit six additional decisions supporting their "Motion to Enforce the Arbitration Provisions of the Master Settlement Agreement and Compel Arbitration."¹ (Docket Nos. 262, 263.) With these decisions, which are offered as supplemental authority, 42 out of 43 MSA courts have now held that the MSA's plain and unambiguous language compels arbitration of the parties' dispute²:

1. *Montana v. Philip Morris, Inc.*, No. CDV-1997-306 (Mont. Dist. Ct. Mar. 6, 2007). (Exhibit 2.)
2. *Alabama v. Philip Morris, Inc.*, No. CV-1998-2941-PR (Ala. Cir. Ct. Mar. 9, 2007). (Exhibit 3.)

¹ In the OPMs initial submission of supplemental authority, the OPMs cited the Arizona MSA court's order compelling arbitration, which was stayed to allow the State adequate time to file a petition for discretionary review, in support of the motion to enforce the arbitration provisions of the MSA. That decision was finalized on February 22, 2007, and is also attached as supplemental authority. (Exhibit 1.)

² On March 23, 2007, the New Mexico MSA Court granted the OPM's motion to compel arbitration from the bench. A written order is not yet available.

3. *Wisconsin v. Philip Morris, Inc.*, No. 97-CV-0328 (Wis. Cir. Ct. Mar. 14, 2007). (Exhibit 4.)

4. *West Virginia v. American Tobacco Co.*, No. 94-CV-1707 (W. Va. Cir. Ct. Mar. 20, 2007). (Exhibit 5.)

5. *South Carolina v. Brown & Williamson Tobacco Corp.*, No. 97-CP-40-1686 (letter from judge to counsel advising of decision to grant motion to compel arbitration). (Exhibit 6.)

6. *Rhode Island v. Brown & Williamson Tobacco Corp.*, C.A. No. 97-3058 (R.I. Super. Ct. Mar. 27, 2007). (Exhibit 7.)

In addition, the OPMs note that of the 42 MSA Courts that have compelled arbitration, 17 of those decisions are now final. Decisions compelling arbitration are final and non-appealable in Alaska, Arkansas, California, Colorado, the District of Columbia, Hawaii, Idaho, Iowa, Missouri, Nevada, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Virginia and Wyoming. The Virginia decision³ and the Pennsylvania decision⁴ denying *certiorari* are attached as additional supplemental authority.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 29th day of March, 2007.

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³ *Virginia v. Philip Morris USA, Inc.*, Record No. 062245, Cir. Ct. No. HJ-2241 (Va. Feb. 21, 2007). (Exhibit 8.)

⁴ *Pennsylvania v. Lorillard Tobacco Co.*, No. 298 C.D. 2007 (Penn. Commw. Ct. Mar. 21, 2007). (Exhibit 9.)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice to the following: Benjamin Acosta, Jr., Francisco A. Besosa, Edgardo Cartagena Santiago, Jose A. Fuentes Agostini, William A. Graffam, Manuel A. Guzman Rodriguez, Paul H. Hulsey, Juan A. Ramos Diaz, Hector Reichard Jr., Vicente Santori Coll, Francisco M. Troncoso, Richard Schell Asad, Eric A. Tulla. Notice will be served by regular mail to the following non registered attorneys:

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In San Juan, Puerto Rico this 29th day of March, 2007.

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